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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,781	07/28/2003	La'Tanya Y. Patty-Brown	22510.00	5345

37833 7590 11/03/2004

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EXAMINER

GIBSON, KESHIA L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,781

Applicant(s)

PATTY-BROWN ET AL.

Examiner

Keshia Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07/28/2003
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____

DETAILED ACTION

Claim Objections

1. Claim 1 objected to because of the following informalities: the use of "two legs" as written would imply that the undergarment has legs such as those found on pants. The examiner suggests changing "two legs" to "two leg openings" or something similar. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Lonon (U.S. Pat. 4, 835, 795).

In regard to Claim 1, Lonon discloses an undergarment 1/11 with a seat flap 4/14 that can be opened and closed with a self-gripping fastener 5/15, 6/16 (abstract). Lonon also discloses that the undergarment can be made of any fabric suitable for undergarments or body suits (column 2, lines 34-37). If a disposable undergarment were desired, this would allow for the undergarment to be made from a nonwoven fabric or other disposable fabric material. Referring to the embodiment shown in Figure 7, the undergarment can be considered to have a belt portion comprised of the front body

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panel **12** and back panel **13**. These panels can be mated using hook and loop type fasteners **18, 19** (column 3, lines 25-28).

The seat flap **4/14** is permanently attached to the back panel **2/13** (column 1, lines 30-32). The front end of the seat flap **5/15** is attached to the front body panel of the undergarment **3/12** with hook and loop type fasteners (column 1, lines 32-45).

Lonon also discloses attaching a third loop type fastener strip **7/17** to the back panel of the undergarment **2/13**; this third strip **7/17** can then secure the seat flap to the back panel **2/13** of the garment to prevent it from being soiled (column 1, lines 46-52).

In regard to Claim 2, as discussed above, Lonon discloses that the front and back panels can be mated using hook and loop type fasteners **18, 19** (column 3, lines 25-28).

In regard to Claim 3, as discussed above, the front end of the seat flap **5/15** is attached to the front body panel of the undergarment **3/12** with hook and loop type fasteners (column 1, lines 32-45).

In regard to Claim 4, as discussed above, Lonon discloses using a third strip **7/17** to secure the seat flap to the back panel **2/13** of the garment, preventing it from being soiled (column 1, lines 46-52).

In regard to Claim 5, Lonon discloses an elastic waist band (column 2, lines 50-51).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Yeater et al. (U.S. Pat. Pub. 2002/0138065).

In regard to Claim 1, Yeater et al. discloses a garment having a waist band portion **14, 16** and a crotch component **12** (abstract). The waist band, serving as a belt, has a rear waist band **14** and a front waist band **16**. The crotch component **12** is permanently attached to the rear waist band **14** and is meant to be between the user's legs during use (paragraph 32). The front crotch edge **18** can be attached to the front waist band **16** using gripping and target connectors **52, 54**, which are designed to be releasably connected to each other (paragraph 58). As can be seen in the Figures 1-6 and 8-9, the crotch **12** can embody a rectangular shape.

The front end of the crotch component **18** can be tucked, pinned, or otherwise releasably secured to the rear area of the waist band while the wearer uses a toilet.

In regard to Claim 2, the rear waist band **14** and front waist band **16** wrap around the wearer's waist in a belt-like manner (paragraph 52). Yeager et al. prefer that the side seams **22** of the belt be permanently bonded but disclose that the side seams **22** of the garment may be connected with a hook and loop type fastener. Figure 4 shows a one-piece embodiment of the garment having only one detachable side seam **22**. If this embodiment is used, then only one hook and loop type fastener is needed to secured the waist band around the user's midriff.

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In regard to Claim 3, as mentioned earlier, the front crotch edge **18** can be attached to the front waist band **16** using gripping and target connectors **52, 54**. Yeager et al. prefer that these connectors **52, 54** be made of hook and loop type fasteners (paragraph 58).

In regard to Claim 5, Yeager et al. disclose that the inner leg-hole edges **20** may be made in a variety of shapes; shapes other than those disclosed can be used to provide comfort, leakage protection or manufacturing benefits (paragraph 51). They also disclose the option of placing standing leg gathers on the topsheet **34** of the crotch **12** above the absorbent core. These gathers are comprised of elastic as disclosed in Suzuki (U.S. Pat 5,292,316), which Yeager et al. have incorporated by reference. In both instances, the elastic can be considered in between the rear waist belt **14** and the back of the belt portion **16**.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yeater et al. in view of Lonon.

As discussed above, Yeager et al. disclose an undergarment **10** comprising of a belt portion **14,16** and a flap portion **12**. The back of flap portion **12** is permanently attached to the back of the belt portion **14**; the front of the flap **12** is releasably attached to the front of the belt **16**. Lonon also discloses an undergarment **1/11** with a flap portion **4/14** permanently attached to the back of a back body panel **2/13** and releasably attached to the front panel **3/12**. Both undergarments use hook and loop type fasteners to attach the flap to the front portion of the garment. However, Lonon uses a third loop type fastener **7/17** to secure the flap to the back portion of the garment while the wearer uses a toilet.

It would be obvious to one of ordinary skill in the art to modify Yeater based on the teachings of Lonon to provide for a way to secure the flap of such undergarments to prevent soiling by the wearer.

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Conclusion

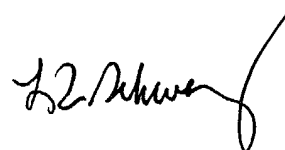
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Karami et al. (US. Pat. Pub. 2002/0151858), which the applicant also cited, and Knight (U.S. Pat. 4,995,873).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (703) 305-0849. The examiner can normally be reached on M-F 8:30 a.m. -- 6 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KG 10/26/2004



Larry I. Schwartz
Supervisory Patent Examiner
Group 3700

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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ART UNIT	PAPER
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20041025

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